IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26..02..2007

CORAM

THE HONOURABLE MR. JUSTICE K. CHANDRU

W.P.No.3947 of 2006

K.Mani .. Petitioner

Vs.

1. The Secretary to Government
Health and Famiy Welfare Department
Fort St. George, Chennai - 9

2. The Director of medical & Rural Health Services
Teynampet, Chennai

3. The Joint Director of Medical Services
Government Headquarters Hospital
Thiruvannamalai

4. The Superintendent of Police
Thiruvannamalai District .. Respondents

Petition filed under Article 226 of the Constitution of India for the issuance of Writ of Certiorarified Mandamus, calling for the records of the second respondent in connection with the impugned order issued in Mu.Mu.102451/Ka.Pi1/3/2005 dated 07.12.2005, quash the same and direct the respondents to reimburse the expenses incurred by him for his heart treatment in the Apollo Hospitals.

For Petitioner : Mr. K.Venkataramani

For respondents : Mr.V.R.Thangavelu, GA

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O R D E R

The petitioner, a serving Head Constable belonging to the Uniformed Services of the State of Tamil Nadu and attached to the Katchampatty Police Station, Thiruvannamalai District, has filed the present writ petition seeking to challenge the order dated 07.12.2005 passed by the second respondent in rejecting his request for availing assistance under

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the Tamil Nadu Government Employees' Health Fund Scheme for having undergone an Angioplasty in an approved private Hospital.

2. The petitioner, having joined the service in the Vellore Armed Reserve on 15.9.1980, got transferred to law and order in the year 1989. He was promoted as Grade - I Constable in the year 1995 and got further promoted as Head Constable in the year 2000. When he was working in the Police Station at Eraiyur, on 10.11.2002, all of a sudden, he developed cardiac problem while he was on duty and he was rushed to the Government Hospital, Thirupattur, for first aid treatment and as per the advise of the Doctor in that Government Hospital, he was taken to the Appollo Hospitals, Chennai, for proper and further treatment for his heart ailment. He was admitted in the said Hospital in Chennai on 11.11.2002 and after an initial treatment from outside the Hospital, he was once again admitted as an in-patient due to the seriousness of his disease. There was a block in his heart and after admission in the Intensive Care Corollary Unit, he was suggested to undergo corollary angiogram and the same was done on 12.11.2002. In view of the age of the petitioner, which was already beyond 45, he was not advised for any open heart surgery or bypass surgery. It was a single vessel critical block and it was suggested to have angioplasty, which was also done on 19.11.2002. Subsequently, after recovery, he was discharged from the hopital on 22.11.2002.

3. During the process of medical treatment, he had incurred an expenditure of Rs.1,88,497/- for which proper receipts were given. The petitioner made a representation and the same was rejected by the second respondent by order dated 27.11.2002 stating that there is no provision for reimbursement for the kind of treatment undergone by the petitioner. Thereafter, a further representation dated 24.8.2004 was made by the petitioner. The petitioner also filed a writ petition before this Court being W.P.No.32545 of 2005 and this Court, by order dated 07.10.2005, directed the respondents to consider the representation of the petitioner. Pursuant to the same, the matter was referred to the opinion of the Dean, Government General Hospital. Accordingly, by a letter dated 29.11.2005, the Dean, Government General Hospital, communicated to the second respondent the report of the Professor and Head of the Department, Cardiology, Government General Hospital, Chennai. According to the report, the treatment undergone by the petitioner did not require any emergency treatment and facilities are available in Government General Hospital, Chennai, and the treatment was a special one. But, however, the said treatment was not included in G.O.Ms.No.400 Finance (Salaries) Department dated 29.8.2000. But it was stated that the charges paid by the petitioner was acceptable and reasonable. This report was, in turn, communicated by the first respondent to the petitioner with a covering letter dated 07.12.2005, which is impugned in the writ petition.

4. I have heard the arguments of Mr.K.Venkataramani, learned

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counsel appearing for the writ petitioner, Mr.V.R.Thangavelu, learned Government Advocate representing the respondents, and have perused the records.

5. If we do not protect the man who protects us all the time, then who will protect those protectors. This is a serious question which the State had to address itself. If this is the attitude of the State in protecting the lives of its own constabulary and that too, for a person having served for 25 years of its forces, then it is really a sad state of affairs. The Supreme Court as early as in its decision reported in (1987) 2 SCC 165 [Vincent Panikurlangara vs. Union of India and others] described the obligation of the State in a welfare State regarding the health of its citizen and in paragraph 16 of the judgment, it was observed as follows:

Para 16. "A healthy body is the very foundation for all human activities. That is why the adage "Sariramadyam Khalu dharma Sadhanam". In a welfare State, therefore, it is the obligation of the State to ensure the creation and the sustaining of conditions congenial to good health."

6. Even when dealing with the question of criminals lodged in Jails and further elaborating the said issue, the Supreme Court in its decision reported in (1989) 4 SCC 286 [Pt. Parmanand Katara vs. Union of India and others] held as follows:

Para 7. "There can be no second opinion that preservation of human life is of paramount importance. That is so on account of the fact that once life is lost, the status quo ante cannot be restored as resurrection is beyond 'the capacity of man. The patient whether he be an innocent person or be a criminal liable to punishment under the laws of the society, it is the obligation of those who are in charge of the health of the community to preserve ,life so that the innocent may be protected and the guilty may be punished. Social laws do not contemplate death by negligence to tantamount to legal punishment.

Para 8. Article 21 of the Constitution casts the obligation on the State to preserve life. The provision as explained by this Court in scores of decisions has emphasised and reiterated with gradually increasing emphasis on that position. A doctor at the Government hospital positioned to meet this State obligation is, therefore, duty bound to extend medical assistance for preserving life. Every doctor whether at a Government hospital or otherwise has the professional obligation to extend his services with due expertise for protecting life. No law or State action can intervene to avoid/delay the discharge of the paramount obligation cast upon members of the medical profession. The obligation being total, absolute and paramount, laws of procedure whether in statutes or otherwise, which would

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interfere with the discharge of this obligation cannot be sustained and must therefore, give way...."

7. Once again, in the decision reported in (1996) 2 SCC 549 [Chameli Singh and others vs. State of U.P. and another] in applying the universal declaration of human rights, the Supreme Court dealt with the rights guaranteed in a civilised society which includes medical care. The passage found in paragraph 8 is relevant and the same is extracted below:

Para 8. "In any organised society, right to live as a human being is not ensured by meeting only the animal needs of man. It is secured only when he is assured of all facilities to develop himself and is freed from restrictions which inhibit his growth. All human rights are designed to achieve this object. Right to live guaranteed in any civilised society implies the right to food, water, decent environment, education medical care and shelter. These are basic human rights known to any civilised society. All civil, political, social and cultural rights enshrined in the Universal Declaration of Human Rights and Convention or under the Constitution of India cannot be exercised without these basic human rights...."

8. Apart from protecting all the citizens of this country, there is a further obligation on the State to protect its own servants as guaranteed in the Constitution. The Supreme Court in its decision reported in (1995) 3 SCC 42 [Consumer Education & Research Centre and others vs. Union of India and others] held that the right to health to a worker is an integral facet of meaningful right to life and the passages found in paragraphs 24 and 25 are extracted below:

Para 24. "The right to health to a worker is an integral facet of meaningful right to life to have not only a meaningful existence but also robust health and vigour without which worker would lead life of misery. Lack of health denudes his livelihood. Compelling economic necessity to work in an industry exposed to health hazards due to indigence to bread-winning to himself and his dependents should not be at the cost of the health and vigour of the workman. Facilities and opportunities, as enjoined in Article 38, should be provided to protect the health of the workman. Provision for medical test and treatment invigorates the health of the worker for higher production or efficient service. Continued treatment, while in service or after retirement is a moral, legal and constitutional concomitant duty of the employer and the State. Therefore, it must be held that the right to health and medical care is a fundamental right under Article 21 read with Articles 39

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(c), 41 and 43 of the Constitution and make the life of the workman meaningful and purposeful with dignity of person. Right to life includes protection of the health and strength of the worker is a minimum requirement to enable a person to live with human dignity. The State, be it Union or State Government or an industry, public or private, is enjoined to take all such action which will promote health, strength and vigour of the workman during the period of employment and leisure and health even after retirement as basic essentials to live the life with health and happiness. The health and strength of the worker is an integral facet of right to life. Denial there of denudes the workman the finer facets of life violating Art. 21. The right to human dignity, development of personality social protection, right to rest and leisure are fundamental human rights to a workman assured by the Charter of Human Rights, in the Preamble and Articles 38 and 39 of the Constitution. Facilities for medical care and health against sickness ensures stable manpower for economic development and would generate devotion to duty and dedication to give the workers 'best physically as well as mentally in production of goods or services. Health of the worker enables him to enjoy the fruit of his labour keeping him physically fit and mentally alert for leading a successful life, economically, socially and culturally. Medical facilities to protect the health of the workers are, therefore, the fundamental and human rights to the workmen.

Para 25. Therefore, we hold that right to health, medical aid to protect the health and vigour of a worker while in service or post retirement is a fundamental right under Article 21, read with Articles 39(e), 41,43 48A and all related to Articles and fundamental human rights to make the life of the workman meaningful and purposeful with dignity of person."

9. The said issue was once again reiterated in (1997) 2 SCC 83 [State of Punjab and others vs. Mohinder Singh Chawla and others] and the relevant passage found in paragraph 4 is extracted below:

Para 4. ".... It is now settled law that right to health is an integral to right to life. Government has constitutional obligation to provide the health facilities. If the Government servant has suffered an ailment which requires treatment at a specialised approved hospital and on reference whereat the Government servant had undergone such treatment therein, it is but the duty of the State to bear the expenditure incurred by the Government servant. Expenditure, thus, incurred requires to be reimbursed by the State to the employee. The High Court was, therefore, right in giving direction to reimburse the expenses

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incurred towards room rent by the respondent during his stay in the hospital as an inpatient."

10. While discussing about the obligation of the State in providing health care to all its citizens, more particularly, to the servants of the State, the Court was not unconscious about the limited resources the State has in the matter of reimbursement of medical expenses. Therefore, the Court struck a note of caution vide its decision reported in (1998) 4 SCC 117 [State of Punjab and others vs. Ram Lubhaya Bagga and others] and held in paragraphs 26, 29 and 32 in the following lines:

Para 26. "When we speak about a right, it correlates to a duty upon another, individual, employer, Government or authority. In other words, the right of one is an obligation of another. Hence the right of a citizen to live under Article 21 casts obligation on the State. This obligation is further reinforced under Article 47, it is for the State to secure health to its citizen as its primary duty. No doubt Government is rendering this obligation by opening Government hospitals and health centres, but in order to make it meaningful, it has to be within the reach of its people, as far as possible, or reduce the queue of waiting lists, and it has to provide all facilities for which an employee looks for at another hospital. Its up-keep; maintenance and cleanliness has to be beyond aspersion. To employ best of talents and tone up its administration to give effective contribution. Also bring in awareness in welfare of hospital staff for their dedicated service, give them periodical, medico-ethical and service oriented training, not only at the entry point but also during the whole tenure of their service. Since it is one of the most sacrosanct and valuable rights of a citizen and equally sacrosanct sacred obligation of the State, every citizen of this welfare State looks towards the State for it to perform its this obligation with top priority including by way allocation of sufficient funds. This in turn will not only secure the right of its citizen to the best of their satisfaction but in turn will benefit the State in achieving its social, political and economical goal. For every return there has to be investment. Investment needs resources and finances. So even to protect this sacrosanct right finances are in inherent requirement. Harnessing such resources needs top priority."

Para 29. "No State of any country can have unlimited resources to spend on any of its project. That is why it only approves its projects to the extent it is feasible. The same holds good for providing medical facilities to its citizen

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including its employees. Provision of facilities cannot be unlimited. It has to be to the extent finance permit. If no scale or rate is fixed then in case private clinics or hospitals increase their rate to exorbitant scales, the State would be bound to reimburse the same. Hence we come to the conclusion that principle of fixation of rate and scale under this new policy is justified and cannot be held to be violative of Article 21 or Article 47 of the Constitution of India."

Para 32. "Any State endeavour for giving best possible health facility has direct co-relation with finances. Every State for discharging its obligation to provide some projects to its subject requires finances. Article 41 of the Constitution gives recognition to this aspect."

11. Further, the same theme was echoed by the Supreme Court in its decision reported in (1996) 4 SCC 37 [Paschim Banga Khet Mazdoor Samity and others vs. State of W.B. and another] and in paragraph 16, it was observed as follows:

Para 16."It is no doubt true that financial resources are needed for providing these facilities. But at the same time it cannot be ignored that it is the constitutional obligation of the State to provide adequate medical services to the people. Whatever is necessary for this purpose has to be done. In the context of the constitutional obligation to provide free legal aid to a poor accused this Court has held that the State cannot avoid its constitutional obligation in that regard on account of financial constraints. (See Khatri (II) v. State of Bihar). The said observations would apply with equal, if not greater, force in the matter of discharge of constitutional obligation of the State to provide medical aid to preserve human life. In the matter of allocation of funds for medical services the said constitutional obligation of the State has to be kept in view...."

12. But this Country has a long tradition of taking care of the infirm and disabled. Tracing about the long history of health related issues, the Nobel Laureate Dr.Amartya Sen (who is Lamont University Professor, and Professor of Economics and Philosophy at Harvard University and was until recently the Master of Trinity College, Cambridge) in his speech delivered at the 14th K.S.Sanjivi Endowment Lecture on 10.02.2007 at Chennai introduced the history of health care in our country in the following lines:

"The lecture is about the contemporary world, but from time to time I must talk also about hisotry, since the relation between health and human society is a matter of ageless interest. Indeed, I begin at a point of time two and half thousand years ago when young Gautama, later known as Buddha, left his princely home in search of enlightenment.

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What moved, we should ask, this sensitive and reflective young prince so much? Gautama was moved by the sight of mortality, morbidity and disability. These are, it is not hard to see, all health-related concerns."

"..... But no matter at which level we confront these adversities, Buddha's focus on enlightenment, on the importance of knowledge and understanding, remains as relevant today in addressing problems of human misery and insecurity as it was in his world two and half millennia ago."

13. Further, dwelling on the same issue about the need to have health as a human right and the necessity for a good health policy and health coverage for all, he said as follows:

"..... Such social and economic claims as the right not to be hungry, or not be without medical care, or even the right to a minimally good health can serve the extremely important purpose of directing attention towards ways and means of making those claims as realizable as possible. Even though not every one will actually have a minimally healthy life, given biological barriers and other feasibility problems, the recognition of it as a right provides a huge political incentive to try to expand maximally the fulfilment of that claim. Those barriers that can be removed, including institutional and economic ones, need to be dislodged as widely and as rapidly as possible. That is where the force of the claim of health as human right stands."

"... stratification and the loss of freedom of those at the bottom can make them much

more prone to avoidable illness and premature death. The policies that can make a difference to health – and through that to basic human freedoms – can be very extensive indeed. The distinction between "good health policy" and "good policy for health" can be quite important."

"... but what is at issue is not the elimination of private health care, but rather the universal coverage of public health care for all. Indeed, most West European countries have such combinations in one form or another, and this is unlikely to change until and unless inqualities in incomes and wealth were to disappear. But health coverage for all as a part of human right to basic health need not await that possibility distant dawn."

14. Considering the issue raised before this Court, one has to

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analyse the reasons found in the impugned notice. For the first question whether surgical treatment was emergent, it was opined by the Professor of Cardiology that it was not emergency. If one looks at the events leading to the petitioner having got treated at the private Hospital, it can be easily seen that while on 10.11.2002 he developed cardiac problem, he was given first aid treatment at the Government Hospital, Thiruppathur, and only on their advise, he had approached the private Hospital, Chennai, and at Chennai, he was admitted in the ICCU on 11.11.2002 and angiogram was done on 12.11.2002 subsequent to which, angioplasty was performed on 19.11.2002 and thereafter, the petitioner's condition has vastly improved and he has been found fit and he has been in service even till date. Instead of appreciating the timely help rendered by the concerned, it is really unfortunate that a report should be sent stating that it was not required to have an emergency operation.

15. In this context, it is relevant to point out a decision of this Court reported in 2003 (3) CTC 660 [D.Rajarathinam v. The Management of Metro Transport Corporation Ltd., Chennai] wherein a learned Judge of this Court in paragraph 9 of the order observed as follows:

> Para 9. "... based on the nature of the disease and condition of the patient, it is for the Doctors to decide and suggest, which kind of surgery is suitable. The patient being a lay man cannot choose the mode of surgery. Therefore denying the benefit on the ground that petitioner's wife was performed closed heart surgery is contrary to the medical jurisprudence, medical Scheme and Circular. In the modern time when closed heart surgery is considered as an advanced mode, which does not warrant for opening he heart, involving less expenditure than that of open heart or bye-pass surgery, there was nothing wrong in selecting a particular mode of surgery."

16. Regarding the further reason found in the impugned order that facilities are available in the Government General Hospital, one has only to state that the statement has been made not contemporaniously but as a sort of review of the action already taken. Even if the facilities were available, the question will have to be posed was as to whether at that point of time, the petitioner could have got timely treatment.

17. In fact, the Supreme Court in State of Punjab and others vs. Ram Lubhaya Bagga and others (cited supra), in paragraph 17 observed as follows:

> Para 17."..... The procedure laid down under this was very onerous, some times not workable, specially in emergency cases. Under it if one needs medical treatment either outside India or in any hospital other than the Hospital of Government of Punjab, an application seeking approval for such treatment in such hospital has to be made to the Director of Health and Family Welfare two months in advance duly recommended by CMO/Medical Superintendent indicating

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that the treatment for such disease is not available in the hospital of the Government of Punjab. In cases of emergency such application is to be authenticated by CMO/MS to be made fifteen days in advanece. It is this procedure which deprived persons from getting prompt and better treatment at other places. Some of the serious diseases do not knock or warn through bell giving them time. Emergency cases require immediate treatment and if with a view to comply with procedure one has to wait then it could be fatal. One may not in such cases live, if such a procedure is strictly followed...."

18. In dealing with the conditions of the Government Hospital, the Supreme Court in State of Punjab and others vs. Mohinder Singh Chawla and others (cited supra), in paragraph 5 of the judgment observed as follows:

Para 5. "The learned counsel then contends that the State would be saddled with needless heavy burden, while other general patients would not be able to get the similar treatment. We appreciate the stand taken that greater allocation requires to be made to the general patients but unfortunately due attention for proper maintenance and treatment in Government Hospitals is not being given and mismanagement is not being prevented. Having had the constitutional obligation to bear the expenses for the Government servant while in service or after retirement from service, as per the policy of the Government, the Government is required to fulfil the constitutional obligation. Necessarily, the State has to bear the expenses incurred in that behalf."

19. In any event, the original objection was that this treatment was not inlcuded in G.O.Ms.No.400 Finance (salaries) Department dated 29.8.2000. However, by G.O.Ms.No.556, Finance (Salaries) Department dated 08.11.2004, the treatment 'Angioplasty and PTCA Stent' has been included in Annexure I under Schedule I and for such treatment, even private Hospital can be approached.

20. But, however, the learned Government Advocate contends that the said amendment is only prospective, viz., the date of the order, i.e., 08.11.2004 whereas the petitioner had performed his operation on 19.11.2002 and, therefore, he is not eligible for coverage. As found in the decision of this Court, for such treatments, which are in advanced mode, other than open heart surgery, the respondents cannot shirk their responsibility or pain of reimbursing the amount spent by the beneficiaries. In fact, under the G.O.Ms.No.400 Finance (Salaries) Department dated 29.8.2000, only 'CABG Surgery' has been mentioned. But in the amendment dated 08.11.2004, in the preamble portion of the Government Order, it is stated as follows:

"The Angioplasty and PTCA Stent is a specialised advanced treatment given for the 'Coronary artery disease'

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to remove blocks in the Cornoary artery system and it is an alternative to the CABG Surgery. After getting the opinion of Director in Medical Education, the Government have decided to include the 'Angioplasty and PTCA Stent' in the list of surgery under the Tamil Nadu Government Employees Health Fund Scheme. Accordingly, the Government direct that the 'Angioplasty and PTCA Stent' shall be included in the list under the group "Cardiology and Cardio Thoracic" surgery for the purpose of availing assistance under Tamil Nadu Government Employees Health Fund Scheme."

[Emphasis added]

21. When the Government itself states that it is a specialised advanced treatment and it is an alternative to CABG surgery, it is too late to state that while the Government is willing to foot the bill for an open heart surgery (which is cumbersome, risky and most expensive) that it will not provide for a scientifically advanced treatment in the medical world. One should treat the addition in the schedule as if it is stood even on the date of the original G.O., viz., 29.8.2000. Otherwise, it will have meaningless effect. Under the orders for reimbursement for a specialised surgery, for treatment of heart ailment is included and getting treatment from a private Hospital is also included.

22. The only question is whether this treatment mode is to be reimbursed or not. In the question of interpretation, we should keep the object in mind and the object is to cure the heart ailment by a surgical treatment. In these days of modern advance in medical research and increasingly, Tamil Nadu is becoming a centre for medical tourism, one has to interpret G.O.Ms.No.556 dated 08.11.2000 which included Angioplasty, as a clarification and not as one creating any new right in favour of any beneficiary. Further, by such an interpretation, neither the policy of the Government is interfered with nor any additional burden is cast upon. Such a view does not involve any extra financial burden and as it does not involve any change of policy.

23. In view of the above, this Court is constrained to reject the argument that G.O.Ms.No.556 Finance (Salaries) Department dated 08.11.2004 should be read so as to have a prospective effect. On the contrary, if the order is read as a clarification of the earlier order as it does not introduce any new amendment but only introducing a different regime of treatment, it could have a retroactive effect so as to serve the true object and scope of the said order. This Court is conscious of the parameters laid down by the Supreme Court referred to above and yet, is constrained to hold that the said order as having a retroactive effect.

24. The other statement is that the facilities are available in Government General Hospital. As already observed by this Court as well as the Apex Court, it is not for any person to decide as to where they should get treatment so long as the Government Order provides for reimbursement and the impugned order shows that the Hospital in which the

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petitioner got treated has been included in the list of Hospitals in G.O.Ms.No.400 Finance (Salaries) Department dated 29.8.2000. The report also states that the charges are reasonable and the treatment was a special one.

25. If the Government servants inlcuding the members of the Uniformed Services are driven from pillar to post in getting reimbursement of the expenses involved in saving their life, death will become inexpensive rather a desire to live. The said situation has been beautifully portrayed by Ignatow, David, an American poet. In his New Poems compiled under the caption of "Tread the Dark", he composed the following poem:

"I have found what I want to do --
to kill myself quietly
I can do it slowly
in my sleep
or nourish it
in me at my work --
jealous of those
who have died
because life's needs
were endless but death
was satisfied with little."

[From "Tread the Dark" in New Poems first published in 1966 by Little, Brown and Company, Boston, Toronto.]

26. In the light of the above discussion, this Court has no hesitation in quashing the impugned order dated 07.12.2005 passed by the first respondent. Accordingly, the writ petition shall stand allowed quashing the impugned order and the respondents 1 and 2 are directed to reimburse the claim made by the petitioner in terms of the medical treatment undergone by him on 19.11.2002 within a period of four weeks from the date of receipt of a copy of this order. However, there will be no order as to costs.

gri

Sd/-
Asst.Registrar

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Sub Asst.Registrar

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To

1. The Secretary to Government
   Health and Famiy Welfare Department
   Fort St. George
   Chennai - 9

2. The Director of medical & Rural Health Services
   Teynampet
   Chennai

3. The Joint Director of Medical Services
   Government Headquarters Hospital
   Thiruvannamalai

4. The Superintendent of Police
   Thiruvannamalai District

+1 cc to the Government Pleader, Sr.No.12226.

JSK(CO)
dcp/9.3.07

W.P.No. 3947 of 2006

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